

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOHN F. AUSLER,

Plaintiff,

v.

JAMES ROLLINS and PAMELA  
PRUITT,

Defendants.

NO. CV-06-5082-JPH

## ORDER ADOPTING REPORT AND RECOMMENDATION

Magistrate Judge Hutton filed a Report and Recommendation on May 7, 2008, recommending that Defendants' Motion for Summary Judgment (Ct. Rec. 91) be granted and that Plaintiff's Amended Complaint (Ct. Rec. 13) be dismissed with prejudice. (Ct. Rec. 127.) On May 22, 2007, Plaintiff filed objections to the Report and Recommendation. (Ct. Rec. 128.) Defendants filed a response to Plaintiff's objections on May 30, 2008. (Ct. Rec. 132.) Plaintiff filed a reply on June 9, 2008. (Ct. Rec. 133.)

Plaintiff alleges that his right of access to the courts was impeded by the actions of Defendants Pruitt and Rollins. (Ct. Rec. 13.) Plaintiff claims that Defendant Pruitt opened mail, containing a copy of his modified judgment and sentence outside of his presence, and forwarded it to Defendant Rollins who withheld it for fourteen (14) months allegedly causing Plaintiff's loss of a right

1 to appeal his 2001 criminal conviction. *Id.*

2 The magistrate judge correctly held that there are no facts  
3 presented demonstrating that Defendant Rollins purposefully withheld  
4 the July 23, 2003 order in order to impede Plaintiff's access to the  
5 courts or that Defendant Pruitt purposefully interfered with  
6 Plaintiff's mail in any way. (Ct. Rec. 127 at 11-12.) Moreover, as  
7 noted in the Report and Recommendation, a prisoner alleging a  
8 violation of his right of access to the courts must demonstrate that  
9 he has suffered "actual injury." *Lewis v. Casey*, 518 U.S. 343, 349-  
10 50 (1996). The facts show that even if Defendants Rollins and  
11 Pruitt intentionally interfered with Plaintiff's mail to  
12 purposefully impede his access to the courts, no actual injury  
13 occurred as a result of their actions. As indicated in the Report  
14 and Recommendation, the alleged actions of Defendants did not  
15 deprive Plaintiff of a meritorious claim. (Ct. Rec. 127 at 12-14.)  
16 Plaintiff failed to establish his denial of access to the court  
17 claims against Defendants Rollins and Pruitt.

18 Plaintiff also argues that Defendant Rollins violated his  
19 constitutional rights by quoting a passage from the Bible, which  
20 Plaintiff interpreted as a suggestion that Plaintiff should kill  
21 himself. (Ct. Rec. 13.) As indicated in the Report and  
22 Recommendation, the facts as alleged by Plaintiff regarding  
23 Defendant Rollin's behavior do not establish a constitutional  
24 violation. (Ct. Rec. 127 at 15.)

25 Finally, although the Court need not address Defendants'  
26 arguments that they are entitled to qualified immunity from this  
27 lawsuit, the Court additionally notes that the claims against  
28 Defendants are barred by qualified immunity. (Ct. Rec. 127 at 16-

1 17.) Defendants did not violate any clearly established law of  
2 which a reasonable person would have known. Accordingly, as  
3 indicated in the Report and Recommendation, Defendants are entitled  
4 to qualified immunity in this case.

5 Having reviewed the May 7, 2008 Report and Recommendation (Ct.  
6 Rec. 127), Plaintiff's objections thereto (Ct. Recs. 128 & 133), and  
7 Defendants' response to Plaintiff's objections (Ct. Rec. 132), the  
8 Court agrees with the analysis used and conclusions reached by the  
9 Magistrate and hereby **adopts** the Magistrate's May 7, 2008 Report and  
10 Recommendation in its entirety.

11 Based on the forgoing, **IT IS HEREBY ORDERED:**

12 1. Defendants' Motion for Summary Judgment (**Ct. Rec. 91**) is  
13 **GRANTED**.

14 2. Plaintiff's amended complaint (**Ct. Rec. 13**) is **DISMISSED**  
15 **with prejudice**.

16 3. Judgment shall be entered for **Defendants**.

17 4. This file shall be **CLOSED**.

18 **IT IS SO ORDERED.** The District Court Executive is directed to  
19 enter this Order, and forward copies to Plaintiff and counsel for  
20 Defendants.

21 **DATED** this 21<sup>st</sup> day of July 2008.

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23 \_\_\_\_\_  
24 S/ Edward F. Shea  
EDWARD F. SHEA  
UNITED STATES DISTRICT JUDGE

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